

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 136 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NAIMESH P PANDYA

Versus

STATE OF GUJART

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Appearance:

MR AM PAREKH for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 03/04/98

ORAL JUDGEMENT

1. Heard the Ld.Advocate--Mr.A.M.Parekh appearing for the petitioner. Rule. Ld.APP--Ms.B.R.Gajjar appears and waives service of rule on behalf of respondent No.1. Respondent No.2 is present in the court in response to notice issued earlier vide order, dated 27.3.98 and has waived service of rule.

2. The petitioner has challenged the legality and propriety of the order passed by the Ld.Addl.Sessions Judge, Sabarkantha at Himmatnagar, dated 26.2.98 in the matter of Cri.Appeal No.61/91.

3. The respondent-Mukeshkumar Dahyabhai Patel had filed Criminal Complaint No.181/90 in the court of Ld.JMFC, Idar, Dist.Saharkantha under section 138 of Negotiable Instruments Act. That vide the judgment and order, dated 24.10.91 the present petitioner was convicted for the offence made punishable under section 138 of Negotiable Instruments Act, and was sentenced to suffer Simple Imprisonment for six months and pay fine of Rs.4,000/-. That in default of payment of fine the petitioner was ordered to suffer further Simple Imprisonment for two months. That being aggrieved and dissatisfied by the said order of the Ld.JMFC, Idar the present petitioner preferred Criminal Appeal No.61/91 under section 374(3) of Cr.P.C., 1973 in the court of Sessions Judge, Sabarkantha at Himmatnagar. That vide order, dated 26.2.98 the Ld.Addl.Sessions Judge, Himmatnagar, Sabarkantha District dismissed the said appeal and against said impugned order the petitioner has preferred the present revision application.

4. That during the hearing of this revision application the petitioner and the respondent No.2 settled the dispute out of court and entered into a compromise which is reduced into writing. That on the basis of said compromise the parties requested the court for composition of all offences. The Ld.Advocate--Mr.A.M.Parekh appearing for the petitioner has referred to and relied upon the observations made by this court vide paras 6 & 7 of the judgment rendered in the matter Rupabhai Valabhai Bharwad vs State of Gujarat reported in 1994(1) GLR 415 and has submitted that the Negotiable Instruments Act is silent in respect to composition of offences made punishable under section 138. Similarly, Section 320 of Cr.P.C., 1973 also does not prescribe such offences as compoundable. However, the principle discussed in the above said judgment suggests that if the offence is punishable with imprisonment for less than ten years, and if the aggrieved party approaches the court for compounding the offence, and the court is satisfied that the same is honest, genuine, true and voluntary and that the same will bring about harmony and peace between the parties, then there is, in deed, no harm in accepting such compromise. That nonacceptance of the same would perpetuate the dispute between the parties. That following the said principle permission to compound the

offence under section 138 of Negotiable Instruments Act should be granted and the compromise entered into between the parties and admitted before this court should be accepted and order of conviction and sentence dated 24.10.91 passed by the Ld.JMFC, Idar against the present petitioner should be set aside and quashed.

5. I have carefully gone through the observations made by the court in the above referred to matter, and in my opinion, in the absence of any contrary provision in the facts and circumstances of the present case there can not be any bar for granting permission to compound the offence in the interest of substantial justice between the parties.

6. In the instant case, the petitioner as well as the respondent No.2 have voluntarily signed the consent terms in the presence of witnesses. That the petitioner as well as respondent No.2 have appeared before me and have admitted the genuineness of the compromise and have stated that they have voluntarily settled the dispute. That the respondent No.2 has received outstanding dues of Rs.50,000/- which was the subject matter of the criminal case. That the respondent No.2 does not desire to prosecute the petitioner or to punish the petitioner for any offence. Ld.Advocate--Mr.Parekh appearing for the petitioner has identified the parties before me.

7. In view of the above stated facts and circumstances, following the dictum of the judgment rendered by this court in the matter of Rupabhai Bharwad (supra) I hold that in the interest of substantial justice between the parties, the compromise as recorded by the Sheristidar of this court and is taken on record. Accordingly, the impugned order, dated 24.10.91 of Ld.JMFC, Idar in the matter of Criminal Case No.181/90 of conviction and sentence is hereby set aside and quashed. The petitioner as accused of the said case is acquitted of all the charges levelled against him in the said case. Fine, if any, paid by the petitioner be refunded to him. Rule is made absolute accordingly. No costs.